MAR 14 2017

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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 8, 2017

Donald W. Slager, President and Chief Executive Officer
Republic Services, Inc. / Allied Waste Systems, Inc.
18500 N. Allied Way
Phoenix, AZ 85054

Ritchie Granzella, Operations Manager
Achaya Kelapanda, Area Environmental Manager
Lochlin Caffey, Environmental Manager
Eric Fanning, Environmental Manager
Contra Costa Transfer Recovery Station
951 Waterbird Way
Martinez, CA 94553

VIA FIRST CLASS MAIL

CT Corporation System, Agent for Service of Process for Allied Waste Systems, Inc.
(Entity Number C1594086)
818 West Seventh Street, Ste. 930
Los Angeles, CA 90017

Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act

Dear Messrs. Slager, Granzella, Kelapanda, and Caffey and Ms. Fanning:

I am writing on behalf of Communities for a Better Environment ("CBE") in regard to violations of the Clean Water Act (the "Act") that CBE believes are occurring at Allied Waste Systems, Inc.'s industrial facility located at 951 Waterbird Way in Martinez, California, which operates under the name Contra Costa Transfer Station ("Facility"). This letter is being sent to Allied Waste Systems, Inc., Contra Costa Transfer Station, Donald W. Slager, Ritchie Granzella, Achaya Kelapanda, Lochlin Caffey, and Erin Fanning as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "CCTS").

This letter addresses CCTS's unlawful discharge of pollutants from the Facility into channels that discharge into Pacheco Creek, which flows into Suisun Bay, which flows into Carquinez Strait, which flows into San Pablo Bay, which flows into the San Francisco Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CBE refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." This letter notifies CCTS of ongoing violations of the substantive and procedural requirements of the General Permit at the Facility.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CBE hereby places CCTS on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CBE intends to file suit in federal court against CCTS under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

A. Communities for a Better Environment

CBE is a non-profit 501(c)(3) environmental justice organization, organized under the laws of California with its local office at 120 Broadway, Suite 2, Richmond, California 94804. Founded in California in 1978, CBE has approximately six thousand active members throughout the state, including many who live and/or recreate in and around Contra Costa, Solano and Alameda counties. CBE is dedicated to empowering low-income communities of color that seek a voice in determining the health of their air, water and land. At the behest of its members, for at least 30 years, CBE has sought to protect and promote water resources that are swimmable, drinkable, fishable, and sustainable. To further this mission, CBE actively seeks federal and state implementation of the Clean Water Act. Where necessary, CBE directly initiates enforcement actions on behalf of itself and its members.

Members of CBE reside in Contra Costa, Alameda and Solano counties, and near Pacheco Creek, San Pablo Bay, and the San Francisco Bay (hereinafter "Receiving Waters"). As

explained in detail below, the Facility continuously discharges pollutants into the Receiving Waters, in violation of the Clean Water Act and the General Permit. CBE members use the Receiving Waters to wade, bird watch, view wildlife, hike, bike, walk, and run. Additionally, CBE members use the waters to engage in educational and scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Receiving Waters impairs CBE's members' use and enjoyment of these waters. Thus, the interests of CBE's members have been, are being, and will continue to be adversely affected by the Facility's failure to comply with the Clean Water Act and the General Permit.

B. The Contra Costa Transfer Station Facility

On information and belief, CBE alleges that the industrial processes that occur at the Facility include activities associated with sorting of nonhazardous municipal solid waste; hauling, cleaning and maintenance of equipment and machinery; green waste tipping and processing; other activities related to transfer and recovery processes; sorting and baling; and vehicle and equipment maintenance. The Facility's Storm Water Pollution Prevention Plan ("SWPPP") indicates that the Facility's scheduled operating hours are 4:00 am to 6:00 pm Monday through Friday and 6:00 am to 6:00 pm on Saturday and Sunday.

C. Discharges From the Facility

The Waste Discharger Identification Number ("WDID") for the Facility listed on documents submitted to the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") is 2 07I015364. In its Notice of Intent to comply with the General Permit ("NOI"), CCTS certifies that the Facility is classified under Standard Industrial Classification ("SIC") codes 4953 and 4212. The NOI indicates that the Facility covers an area of 22 acres. The Facility collects storm water through a system of storm drains and surface flow, and discharges it through at least one outfall. On information and belief, CBE alleges the outfall contains storm water that is commingled with runoff from the Facility from areas where industrial processes occur. Storm water discharged from the Facility flows into channels that discharge into Pacheco Creek, which flows into Suisun Bay, then into the Carquinez Strait, then into San Pablo Bay, and then into San Francisco Bay.

D. Waters Receiving Facility's Discharges

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

The Regional Board has identified beneficial uses of the San Francisco Bay region's waters and established water quality standards for Pacheco Creek, Suisun Bay, the Carquinez Strait, San Pablo Bay, and San Francisco Bay in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the "Basin Plan." *See* http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml. The beneficial uses of these waters include water contact recreation, noncontact water recreation, wildlife habitat, preservation of rare and endangered species, commercial and sportfishing, estuarine habitat, fish migration, cold freshwater habitat, and warm freshwater habitat. The noncontact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features." *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of Pacheco Creek, Suisun Bay, and San Pablo Bay for water contact recreation and noncontact water recreation.

The Basin Plan establishes water quality standards for Suisun Bay, San Pablo Bay, and their tributaries. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms." *Id.* at 3.3.18. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." *Id.* at 3.3.21. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.14. The Basin Plan provides that "[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.12. The Basin Plan provides that "[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.6. The Basin Plan provides that the "pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at 3.3.9.

The Basin Plan establishes a Marine Water Quality Objectives for zinc of 0.09 mg/L (1-hour average ("HA")). Basin Plan at Table 3-3. The EPA has adopted a saltwater numeric water quality standards for zinc of 0.09 mg/L (Criteria Maximum Concentration – "CMC"). 65 Fed.Reg. 31712 (May 18, 2000) ("California Toxics Rule" or "CTR").

The EPA 303(d) List of Water Quality Limited Segments lists Suisun Bay, the Carquinez Strait, and San Pablo Bay as impaired for chlordane, mercury, selenium, and PCBs, among other pollutants. *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").[1] The following benchmarks have been established for pollutants discharged by CCTS: pH – 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; lead – 0.262 mg/L; chemical oxygen demand ("COD") – 120 mg/L; and biochemical oxygen demand ("BOD") – 30 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; lead – 0.262 mg/L; COD – 120 mg/L; and BOD – 30 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0 - 9.0 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L.

II. Alleged Violations of the General Permit.

A. Discharges in Violation of the Permit

CCTS has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the

[1] The Benchmark Values can be found at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

CCTS has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, iron, aluminum, zinc, COD, and BOD in violation of the General Permit. CCTS's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained measurements of pollutants in excess of the applicable numerical water quality standards. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Sampling / Observation Date	**Parameter**	**Observed Concentration / Conditions**	**Basin Plan Water Quality Objective / CTR**	**Outfall (as identified by the Facility)**
2/6/2015	pH	6.07	6.5 – 8.5	Pump House Outfall
2/18/2016	Zinc	1.1 mg/L	0.09 mg/L (1-HA/ CMC)	MP-1
11/24/2015	Zinc	0.47 mg/L	0.09 mg/L (1-HA/ CMC)	MP-1

The information in the above table reflects data gathered from CCTS's self-monitoring during the 2014-2015 wet season as well as the 2015-2016 reporting year. CBE alleges that since at least March 8, 2012, and continuing through today, CCTS has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 s.u.
- Zinc – 0.09 mg/L (1-HA/CMC)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Sampling Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
2/18/2016	Total Suspended Solids	980 mg/L	100 mg/L	MP-1
11/24/2015	Total Suspended Solids	460 mg/L	100 mg/L	MP-1
11/9/2015	Total Suspended Solids	330 mg/L	100 mg/L	MP-1
2/6/2015	Total Suspended Solids	810 mg/L	100 mg/L	Pump House Outfall
12/11/2014	Total Suspended Solids	260 mg/L	100 mg/L	Pump House Outfall
4/1/2014	Total Suspended Solids	1100 mg/L	100 mg/L	Stormwater 1
4/1/2014	Total Suspended Solids	400 mg/L	100 mg/L	Stormwater 2
2/26/2014	Total Suspended Solids	400 mg/L	100 mg/L	1 Storm Water
2/26/2014	Total Suspended Solids	1100 mg/L	100 mg/L	2 Storm Water
3/1/2012	Total Suspended Solids	300 mg/L	100 mg/L	A Stormwater-1
3/1/2012	Total Suspended Solids	350 mg/L	100 mg/L	B Stormwater - 2
2/18/2016	Iron	40 mg/L	1 mg/L	MP-1
11/24/2015	Iron	16 mg/L	1 mg/L	MP-1
11/9/2015	Iron	18 mg/L	1 mg/L	MP-1
2/6/2015	Iron	21 mg/L	1 mg/L	Pump House Outfall
12/11/2014	Iron	7.4 mg/L	1 mg/L	Pump House Outfall
4/1/2014	Iron	41 mg/L	1 mg/L	Stormwater 1
4/1/2014	Iron	12 mg/L	1 mg/L	Stormwater 2
2/26/2014	Iron	23 mg/L	1 mg/L	1 Storm Water
2/26/2014	Iron	25 mg/L	1 mg/L	2 Storm Water
11/30/2012	Iron	9.2 mg/L	1 mg/L	NW of Slope-A
11/30/2012	Iron	5.7 mg/L	1 mg/L	NE of Slope-B
3/1/2012	Iron	22 mg/L	1 mg/L	A Stormwater-1
3/1/2012	Iron	13 mg/L	1 mg/L	B Stormwater - 2
2/18/2016	Aluminum	25 mg/L	0.75 mg/L	MP-1
11/24/2015	Aluminum	9 mg/L	0.75 mg/L	MP-1
2/18/2016	Zinc	1.1 mg/L	0.26 mg/L	MP-1
11/24/2015	Zinc	0.47 mg/L	0.26 mg/L	MP-1
2/18/2016	Chemical Oxygen Demand	580 mg/L	120 mg/L	MP-1

11/24/2015	Chemical Oxygen Demand	670 mg/L	120 mg/L	MP-1
2/6/2015	Chemical Oxygen Demand	1100 mg/L	120 mg/L	Pump House Outfall
12/11/2014	Chemical Oxygen Demand	220 mg/L	120 mg/L	Pump House Outfall
4/1/2014	Chemical Oxygen Demand	640 mg/L	120 mg/L	Stormwater 1
4/1/2014	Chemical Oxygen Demand	470 mg/L	120 mg/L	Stormwater 2
2/26/2014	Chemical Oxygen Demand	720 mg/L	120 mg/L	1 Storm Water
2/26/2014	Chemical Oxygen Demand	1300 mg/L	120 mg/L	2 Storm Water
11/30/2012	Chemical Oxygen Demand	310 mg/L	120 mg/L	NW of Slope-A
11/30/2012	Chemical Oxygen Demand	420 mg/L	120 mg/L	NE of Slope-B
3/1/2012	Chemical Oxygen Demand	440 mg/L	120 mg/L	A Stormwater-1
3/1/2012	Chemical Oxygen Demand	560 mg/L	120 mg/L	B Stormwater - 2
2/6/2015	Biochemical Oxygen Demand	540 mg/L	30 mg/L	Pump House Outfall
4/1/2014	Biochemical Oxygen Demand	110 mg/L	30 mg/L	Stormwater 1
4/1/2014	Biochemical Oxygen Demand	220 mg/L	30 mg/L	Stormwater 2
2/26/2014	Biochemical Oxygen Demand	230 mg/L	30 mg/L	1 Storm Water
2/26/2014	Biochemical Oxygen Demand	630 mg/L	30 mg/L	2 Storm Water
11/30/2012	Biochemical Oxygen Demand	130 mg/L	30 mg/L	NW of Slope-A
11/30/2012	Biochemical Oxygen Demand	96 mg/L	30 mg/L	NE of Slope-B
3/1/2012	Biochemical Oxygen Demand	140 mg/L	30 mg/L	A Stormwater-1
3/1/2012	Biochemical Oxygen Demand	160 mg/L	30 mg/L	B Stormwater - 2

The information in the above table reflects data gathered from CCTS's self-monitoring during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons as well as the 2015-

2016 reporting year. CBE notes that the Facility exceeded the annual NALs for TSS, iron, aluminum, zinc, and COD during the 2015-2016 reporting year. CBE alleges that since at least March 8, 2012, CCTS has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for TSS, iron, aluminum, zinc, COD, and BOD.

CBE's investigation, including its review of CCTS's SWPPP, CCTS's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that CCTS has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, iron, aluminum, zinc, COD, BOD, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. CCTS was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, CCTS is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CBE alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since March 8, 2012, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CBE alleges that CCTS has discharged storm water containing impermissible and unauthorized levels of pH, TSS, iron, aluminum, zinc, COD, BOD in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.[2]

Further, CBE puts CCTS on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which CCTS must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the 2015 Permit's Effluent Limitations, including CCTS's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has

[2] The rain dates on the attached table are all the days when 0.1" or more rain was observed from a weather station in Concord located approximately 2.9 miles away from the Facility. The data was downloaded via http://ipm.ucanr.edu/calludt.cgi/WXDESCRIPTION?STN=CONCORD.A. (Last accessed on March 8, 2017).

implemented BMPs that achieve BAT/BCT.[3] Finally, even though CCTS has submitted an Exceedance Response Action Plan pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, iron, aluminum, zinc, COD, BOD, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CCTS is subject to penalties for violations of the General Permit and the Act since March 8, 2012.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to observe, detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility. An adequate Monitoring and Reporting Program is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

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[3] The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

implemented BMPs that achieve BAT/BCT.[3] Finally, even though CCTS has submitted an Exceedance Response Action Plan pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, iron, aluminum, zinc, COD, BOD, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CCTS is subject to penalties for violations of the General Permit and the Act since March 8, 2012.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility

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i. Failure to Collect and Analyze Required Storm Water Samples.

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample during *four* (rather than two) storm events from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

During the 2012-2013 wet season, CCTS only collected and analyzed one of its required storm water discharge samples. On information and belief, CBE alleges that CCTS failed to collect and analyze storm water discharges from a second sampling event. In addition, based on local precipitation data compared with past sampling events at the Facility, CBE alleges that the CCTS failed to collect and analyze storm water discharges on the following dates during the 2012-2013 wet season:

- October 31, 2012
- November 19, 2012
- November 16, 2012
- November 21, 2012
- December 21, 2012
- January 5, 2013
- January 23, 2013
- February 19, 2013
- March 6, 2013
- March 19, 2013
- March 30, 2013
- April 4, 2013

The above results in at least 1 violation of the General Permit. This violation of the General Permit is ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CCTS is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least March 8, 2012.

ii. Failure to Conduct Required Visual Observations of Storm Water Discharges.

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, CBE alleges that CCTS failed to conduct monthly visual observations of storm water discharges during numerous months during the past five years. On information and belief, based on precipitation data compared to the dates in which the Facility did conduct monthly visual observation of storm water discharges, as well as the Facility's own reporting, CBE alleges that CCTS failed to conduct monthly visual observations of storm water discharges at its storm water discharge locations during at least the following months:

- 2012 – January, February, March, April, May
- 2013 – January, February, April, November, December
- 2014 – January, February, March, October, November
- 2015 – February, April, May

Therefore, CBE alleges that CCTS failed to conduct monthly visual observations of storm water discharges at the Facility during those months. During many of those months, CCTS purported to make monthly visual observations of storm water discharges on days when a nearby weather station reported no rain, and CCTS failed to make monthly observations on other days of the month when rain was reported. During February 2014 and February 2015, CCTS made visual observations on days when it reported that there was no discharge but failed to make monthly visual observations during those same months when the Facility collected and analyzed storm water discharges.

The above results in at least 18 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CCTS is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 8, 2012.

iii. Failure to Analyze Discharges for Mandatory Parameters.

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-

specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

During the latter three sampling events of the 2015-2016 reporting year, CCTS analyzed its storm water discharges for aluminum and zinc and the concentrations it measured of each were sometimes significantly in excess of the average NAL values as well as the CMC set forth in the California Toxics Rule for zinc. Thus, on information and belief, CBE alleges that aluminum and zinc are pollutants likely to be present in CCTS's storm water discharges in significant quantities and that those pollutants have been present in CCTS's storm water discharges during the past five years. On information and belief, CBE alleges that CCTS has never otherwise analyzed its storm water discharges for aluminum and zinc. These failures to analyze for aluminum and zinc result in at least 22 violations of the General Permit.

In addition, during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, CCTS analyzed its storm water discharges for COD and BOD. CCTS's measurements for these parameters were almost entirely in excess of applicable average NAL and EPA Benchmark values for these parameters. However, CCTS failed to analyze its discharges during the 2015-2016 reporting year for BOD and failed to analyze its November 9, 2015 sample for BOD. Moreover, the Facility's SWPPP fails to mention these parameters as potential pollutants – it fails to mention BOD at all and indicates COD was inadvertently reported. These failures to analyze for BOD and COD result in at least 5 violations of the General Permit.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CCTS is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since March 8, 2012.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CBE indicates that CCTS has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit

Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, CCTS has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CBE puts CCTS on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. CCTS is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. CCTS is subject to civil penalties for all violations of the CWA occurring since at least March 8, 2012.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. *See* 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve

as the basis for compliance with the 2015 Permit's technology-based effluent limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. ¶ 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

The Facility's SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement and maintain the required minimum BMPs for material handling and waste management. The SWPPP fails to implement any advanced BMPs. The SWPPP fails to identify and justify each minimum BMP or applicable BMP not being implemented at the Facility because they do not reflect best industry practice considering BAT/BCT.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded applicable water quality standards, EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, CCTS has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CBE puts CCTS on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CBE will include additional violations as information and data

become available. CCTS is subject to civil penalties for all violations of the CWA occurring since March 8, 2012.

III. Persons Responsible for the Violations.

CBE puts Allied Waste Systems, Inc., Contra Costa Transfer Station, Donald W. Slager, Ritchie Granzella, Achaya Kelapanda, Lochlin Caffey, and Erin Fanning on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CBE puts Allied Waste Systems, Inc., Contra Costa Transfer Station, Donald W. Slager, Ritchie Granzella, Achaya Kelapanda, Lochlin Caffey, and Erin Fanning on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of Communities for a Better Environment is as follows:

Andrés Soto, Richmond Community Organizer
Communities for a Better Environment
120 Broadway, Suite 2
Richmond, CA 94804
Tel. (510) 302-0430
andres@cbecal.org

V. Counsel.

CBE has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
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VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects CCTS to a penalty of up to $37,500 per day per violation for all violations occurring since

October 28, 2011, up to and including November 2, 2015, and up to $51,570 for violations occurring after November 2, 2015. In addition to civil penalties, CBE will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CBE believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CBE intends to file a citizen suit under Section 505(a) of the Act against CCTS and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CBE would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CBE suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CBE does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Communities for a Better Environment

SERVICE LIST – via certified mail

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolf, Executive Officer II
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A

Rain Dates, Contra Costa Transfer Station, Martinez, CA

3/13/2012	1/30/2014	11/1/2015
3/14/2012	2/2/2014	11/2/2015
3/16/2012	2/5/2014	11/9/2015
3/17/2012	2/6/2014	11/15/2015
3/24/2012	2/7/2014	12/3/2015
3/25/2012	2/8/2014	12/10/2015
3/27/2012	2/9/2014	12/11/2015
3/31/2012	2/26/2014	12/13/2015
4/10/2012	2/28/2014	12/18/2015
4/12/2012	3/5/2014	12/20/2015
4/13/2012	3/26/2014	12/21/2015
4/25/2012	3/29/2014	12/28/2015
5/8/2012	3/31/2014	12/29/2015
6/4/2012	4/1/2014	1/4/2016
10/22/2012	4/4/2014	1/5/2016
10/31/2012	4/25/2014	1/6/2016
11/1/2012	9/25/2014	1/10/2016
11/9/2012	10/25/2014	1/13/2016
11/16/2012	10/31/2014	1/14/2016
11/17/2012	11/13/2014	1/15/2016
11/21/2012	11/19/2014	1/16/2016
11/30/2012	11/20/2014	1/17/2016
12/2/2012	11/26/2014	1/18/2016
12/21/2012	11/30/2014	1/19/2016
12/22/2012	12/2/2014	1/22/2016
12/23/2012	12/3/2014	1/29/2016
12/25/2012	12/6/2014	2/17/2016
1/5/2013	12/11/2014	2/18/2016
1/23/2013	12/12/2014	3/4/2016
2/19/2013	12/15/2014	3/5/2016
3/6/2013	12/16/2014	3/6/2016
3/19/2013	12/17/2014	3/7/2016
3/30/2013	12/19/2014	3/9/2016
3/31/2013	2/6/2015	3/10/2016
4/1/2013	2/7/2015	3/11/2016
4/4/2013	2/8/2015	3/12/2016
4/7/2013	4/7/2015	3/13/2016
11/19/2013	4/24/2015	4/8/2016
11/20/2013	4/25/2015	4/9/2016
11/21/2013	5/14/2015	4/10/2016
12/6/2013	6/10/2015	9/2/2016

ATTACHMENT A

Rain Dates, Contra Costa Transfer Station, Martinez, California

10/16/2016
10/17/2016
10/27/2016
10/28/2016
10/30/2016
11/20/2016
11/23/2016
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